

## REMARKS

Applicant respectfully requests further examination and reconsideration in view of the instant response. Claims 1-25 and 27-33 remain pending in the case. Claims 1-25 and 27-33 are rejected. Support for the amendments to independent Claims 1 and 28 can be found in the instant application serial no. 10/616,883 at ,among other places, original Claim 6, Figure 2, paragraphs 0023 lines 7-8, 0030, 0020, and 0022.

Lines 7 and 8 of paragraph 0023 state, "The domain definition data may also include resource utilization information for one or more of the domains.

Paragraph 0030 states,

An alternate method that may be used to enforce policies 315 can be described with reference to FIGs. 6 and 7. FIG. 7 illustrates a domain that consists of a cluster. The cluster includes two containers 710, 720, each of which is associated with an application. Container 710 includes nodes 712, 714, 716. Container 720 includes nodes 722, 724. By way of example, container 710 may host Web servers and container 720 may be hosting batch workloads...

Paragraph 0020 states "Controller 100 receives performance information for an application profile 112-116 from a plurality of client agents 120, 122, 124. Each client agent may run on an operating system instance on a resource and may monitor the performance of applications running on the operating system instance."

Paragraph 0022 states "Controller 100 additionally includes monitoring agent 102 to monitor the application data for compliance with the policy data. In one embodiment, the monitoring agent may provide advisory information about potential actions that can be taken to maintain or restore compliance with application performance or utilization policies...the monitoring agent may adjust resources (e.g., allocate, reallocate, or deallocate them) to enforce policies."

## SRINIVASAN DATED AFTER

Appellant first points out that the patent publication no. 2004/0111725 by Srinivasan (also referred to herein as "Srinivasan" or "Srinivasan's patent publication")

relied upon by the Office Action was filed November 7<sup>th</sup>, 2003, which is after the filing date July 10, 2003 of the instant application serial no. 10/616,883. The Srinivasan patent publication claims priority to a provisional application serial no. 60/426,962 filed November 8, 2002 (also referred to herein as “Srinivasan’s provisional”). To expedite prosecution of the instant application, Appellant has reviewed both Srinivasan’s patent publication and Srinivasan’s provisional. Appellant notes that during prosecution Appellant requested that future Office Actions cite portions of Srinivasan’s provisional instead of citing portions of Srinivasan’s patent publication since Srinivasan’s patent publication was filed after Appellant’s instant application.

35 U.S.C. §102(e)

Claims 1-5, 10-23 and 27 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication 2004/0111725 by Srinivasan et al., (hereinafter referred to as “Srinivasan”) Applicant has reviewed the cited reference and respectfully submits that the embodiments of the present invention are not anticipated by Srinivasan.

MPEP §2131 provides:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Independent Claim 1 recites,

A system comprising:

a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer;

storage that is accessed due to the instructions executing on the processor, wherein the storage stores:

- resource data, the resource data including information on a plurality of resources, the resources including a plurality of computers;
- the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information;
- the policy data including one or more application performance policies and one or more resource utilization policies; and
- domain definition data including information on a plurality of domains where each domain groups a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications.

Applicant respectfully submits that Srinivasan does not teach or suggest, among other things, “a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer...the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information...domain definition data including information on a plurality of domains where each domain groups a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” as recited by Claim 1.

#### SRINIVASAN

This section describes Applicant’s understanding of what Srinivasan teaches and Applicant’s understanding of the difference between what Srinivasan teaches and the embodiment recited by Claim 1. Srinivasan teaches a system 200 for managing applications that includes an application scheduler 150, 240 (abstract and Figure 2). Srinivasan’s system 200 also includes a load balancer 110, 260 that the application scheduler 240 interacts with (Figure 1 and Figure 2). The application scheduler 150, 240 interacts with the load balancer 110, 260 to obtain status information, such as the number of connections (0030). Therefore, Applicant understands Srinivasan to teach away from “a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to

obtain information from a load balancer,” (emphasis added) as recited by independent Claim 1.

Further, Applicant does not understand Srinivasan to teach or suggest “domain definition data including information on a plurality of domains where each domain groups a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” as recited by Claim 1.

Applicant directs the reader to the Appeal Brief filed in response to the Office Action dated September 24, 2007 for reasons why Applicant believes that Srinivasan does not teach “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1.

#### SUMMARY

For at least the reason that Srinivasan teaches away from “wherein the system is not required to obtain information from a load balancer” and does not teach “...the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information...domain definition data including information on a plurality of domains where each domain groups a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications...” Applicant respectfully submits that Srinivasan does not anticipate the embodiment recited by independent Claim 1.

Claims 2-5, 10-23 and 27 depend on independent Claim 1. These dependent claims include all of the features of their respective independent claims. Further these dependent claims include additional features which further make them patentable. Therefore, these dependent claims should be patentable for at least the reasons that the respective independent claims should be patentable.

35 U.S.C. §103(a)

Claims 1-3, 5-15 and 17-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Srinivasan in view of United States Patent 6,823,382 by Stone, (hereinafter referred to as “Stone” ). Applicant has reviewed the cited references and respectfully submit that the embodiments of the present invention are neither taught nor rendered obvious by Srinivasan nor Stone, alone or in combination.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Applicant notes that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Applicant respectfully submits that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicant respectfully notes that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). Applicant respectfully submits that there is no motivation to combine the teachings of Srinivasan and Stone, because Srinivasan and Stone teach away from the suggested modification.

### SRINIVASAN

As already stated, Applicant understands Srinivasan to teach away from “a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer,” (emphasis added) as recited by independent Claim 1.

Second, Applicant does not understand Srinivasan to teach or suggest “domain definition data including information on a plurality of domains where each domain groups a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” as recited by Claim 1.

Third, Applicant directs the reader to the Appeal Brief filed in response to the Office Action dated September 24, 2007 for reasons why Applicant believes that Srinivasan does not teach “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1.

### STONE

This section describes Applicant’s understanding of what Stone teaches and Applicant’s understanding of the difference between what Stone teaches and the embodiment recited by Claim 1. Applicant understands Stone to teach managing resources for a multi-tiered application that is geared toward service-level management (title). Each tier of a multi-tiered application corresponds to one type of application (Figure 1 and Figure 2). For example, referring to Figure 1 tier 10 is for a firewall, tier 20 is for a web server, tier 30 is for an application and so on. Stone states at Col. 4 lines 13-14 that Figure 1 depicts “four levels or tiers of service components...” Stone states at Col. 4 lines 8, “The tiered model organizes these components into functional levels or tiers that correspond to the data flow for each service. Statistics collected and events monitored can thus be organized by service and tier, allowing an automated

management server to diagnose problems and relate them to service-level objectives.”  
Stone states at Col. 6 lines 44-50,

Resources that are available for each tier are loaded into tier configuration 52...  
Tier configuration 52 includes a backup list and an alternate-server list that are  
used in the look-ahead process. Other nodes are not considered since they  
aren't part of this tier's service (emphasis added).

Therefore, Stone teaches allocating nodes associated with a particular tier's  
backup list or alternate-server list to that same tier where a tier is for one type of  
application. For this reason, Applicant understands Stone to teach away from “domain  
definition data including information on a plurality of domains where each domain  
groups a subset of the resources, wherein resources associated with a single domain  
are allocated for different types of applications,” as recited by Claim 1.

#### THE COMBINATION OF SRINIVASAN AND STONE

This section describes why applicant believes that Srinivasan and Stone cannot  
be combined because they teach away from the embodiment recited by independent  
Claim 1. Since Srinivasan teaches away from “a processor for executing instructions of  
a monitoring agent to monitor application data for compliance with policy data, wherein  
the system is not required to obtain information from a load balancer,” (emphasis  
added) as recited by independent Claim 1 Srinivasan cannot be combined with another  
reference to suggest the embodiment recited by Claim 1. Further, Stone teaches away  
from “domain definition data including information on a plurality of domains where each  
domain groups a subset of the resources, wherein resources associated with a single  
domain are allocated for different types of applications,” as recited by Claim 1.  
Therefore, neither Srinivasan nor Stone can be combined with another reference to  
suggest the embodiment recited by Claim 1.

For at least these reasons, Applicant believes that independent Claim 1 should  
be patentable. For similar reasons, independent Claim 28 should also be patentable in  
that independent Claim 28 recites “monitoring application data, without requiring  
information from a load balancer, for compliance with one or more performance policies,  
the application data including one or more application profiles, each application profile

having a performance profile and a resource profile, the resource profile including resource utilization information associated with an application, each application executing in a container associated with a domain, each domain including a subset of resources, the resources including a plurality of computers, wherein resources associated with a single domain are allocated for different types of applications...”

Claims 6-9 depend on independent Claim 1. Claims 29-33 depend on independent Claim 28. These dependent claims include all of the features of their respective independent claims. Further these dependent claims include additional features which further make them patentable. Therefore, these dependent claims should be patentable for at least the reasons that the respective independent claims should be patentable.



35 U.S.C. §103(a)

Claims 24 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Srinivasan in view of U.S. Patent Publication 2004/0111725 by Voskuil (referred to hereinafter as “Voskuil”). Applicant has reviewed the cited references and respectfully submit that the embodiments of the present invention are neither taught nor rendered obvious by Srinivasan nor Voskuil, alone or in combination.

VOSKUIL

This section describes Applicant’s understanding of what Voskuil teaches and Applicant’s understanding of the difference between what Voskuil teaches and the embodiment recited by Claim 1. The Office Action asserted that Voskuil teaches the embodiment recited by Claim 24 at paragraphs 0036-0038. Claim 24 recites, “wherein one or more of the application profiles further includes instructions for installing the associated application.” First “the extension module 216 could detect the target application (in distribution format), install the target application and then configure the target application...” (0036 lines 11-13) Paragraphs 0037 and 0038 provide more details pertaining to configuring the target application. Applicant understands Voskuil to teach three types of inputs used for determining how to configure an application (0037). Those three inputs are (1) data representative of the installed applications and/or application components on the end user computer where the data is generated by executing the extension’s discovery module on the end user computer, (2) input from a user indicating which applications/components the user desires to have configured, (3) configuration data from the service provider’s user directory. Paragraph 0038 provides more details on how Voskuil’s system guides a user through the process of configuring already installed applications. For example, paragraph 0038 states, “the autoprofile system uses this information...to dynamically generate an HTML page 334 that is sent to the end user asking the end user to select the applications to be configured...the end user selects the applications he or she wishes to have automatically configured...The autoprofile server...evaluates the selected applications and the pertinent configuration information in order to determine the XML instructions...The configuration XML

instructions can be specifically configured to cause the configuration module to configure installed programs...” Therefore, Applicant does not understand any of these three inputs nor the configuration XML instructions to be instructions that are included in an application profile where the instructions are used for installing an application.

As already described herein, independent Claim 1 should be patentable over Srinivasan. Voskuil does not remedy the deficiency in Srinivasan. Therefore, the combination of Srinivasan and Voskuil does not teach or suggest the embodiment recited by independent Claim 1. In fact, the Office Action does not even cite Voskuil against independent Claim 1. Claim 24 depends from Claim 1. Claim 25 depends on Claim 24. Therefore, Claims 24 and 25 should be patentable for at least the reasons that independent Claim 1 should be patentable.

### CONCLUSION

Based on the arguments presented above, Applicant respectfully asserts that Claims 1-25 and 27-33 overcome the rejections of record and, therefore, Applicant respectfully solicits allowance of these Claims.

The Examiner is invited to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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